IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4783 of 2001

DATE OF DECISION: 17-11-2005

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JYOTSNABEN VINODBHAI JETALPURIYA & 4 OTHERS - Appellants

Versus

BIPINBHAI BHOLABHAI PATEL & ANOTHER - Defendants

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[See Next Page for Full Title]

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for Reporting?

For Appellants:

MR ASHUTOSH R BHATT

For Respondents:

MR KK NAIR

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This appeal is directed against the award of Motor Accident Claim Tribunal, Ahmedabad, in Motor Accident Claim Petition No.187 of 1991 dated July 5, 2001.

2. Shortly stated, accident took place on 16.05.1990 at about 7.15 a.m. when Vinodbhai

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Whether Reporters of Local Papers may be allowed to see the Judgment?

Jetalpuria (deceased) was going on Luna Moped on the main road near Methodist Church. When he was passing through corner opposite Tamil School, Bipinbhai Dhulabhai Patel (opponent-1) came driving loading rickshaw bearing registration no. GJ IT 6983 in full speed in rash and negligent manner and dashed with Luna of the deceased. As a result thereof, deceased dashed with an electric pole opposite Chirag Traders and sustained head injury amongst other injuries. He fell unconscious, therefore, shifted to L.G. Hospital in a rickshaw by opponent-1, where he was declared dead.

3. Consequently, claim is raised on the ground that Luna of deceased was hit by loading rickshaw resulting in head injury and other injuries, due to which he died. Accident was result of rash and negligent driving on the part of the driver of loading rickshaw. Deceased was

38 year old earing Rs.3,000/- per month. He was the bread-earner of his family consisting of wife and four children. Opponent-1 states in his written statement (exh.21) that deceased was returning from his job and when he was proceeding with his loading rickshaw and taking turn near Kashi Vishwanath Temple, opposite Chirag Traders, it dashed with the Luna and the deceased on the Luna dashed with the electric pole, sustained head injuries and died. It is also stated that there was a pit on the road near the turning due to which the loading rickshaw dashed with the Luna and the deceased sustained injuries as he flung and dashed with the electric pole. Opponent-2 (Insurance Company) filed written statement (exh.20) stating that the loading rickshaw was not covered by insurance policy which could not be traced despite efforts. Vehicle was not covered by valid permit, driver was not holding valid license at the time of accident, thereby committed breach of policy conditions. Age, income and injuries suffered by the deceased have also been disputed. Similarly,

taking place of accident on date, time and place mentioned in the petition have also been denied. There is no connection between the death and injuries suffered by the deceased. In substance, Insurance Company has denied the claim.

4. Consequently, the Claims Tribunal framed the following issues:-

"1. Whether the Applicant claimant proves that deceased Vinodbhai Ambalal met with the vehicular accident with loading rickshaw bearing Registration no.GJ 1 T.6983 on 16-5-90 while he was going on a road near Methodist Church? Further whether it is proved that the loading rickshaw bearing no. GJ 1 T. 6983 was involved in the accident as alleged?

2. Whether the Applicant claimant proves that the accident has occurred as a result of rash and negligent driving on the part of the opponent no.1 driver of leading rickshaw bearing no. GJ 1 T.6983?

3. Whether it is proved that deceased succumbed to the death as a result of accidental injuries caused in the vehicular accident as alleged?

4. Whether the Applicants are entitled to any compensation of Rs.5,00,000/- or any amount alongwith the interest?

5. What order and award?"

5. After recording evidence and hearing the parties, findings recorded are that claimants failed to prove that deceased met with vehicular accident with the loading rickshaw bearing registration No. GJ 1 T.6983 on 16.05.1990 while going on the road near Methodist Church and it could not be proved that accident occurred as a result of rash and negligent driving on the part of driver of loading rickshaw and deceased succumbed to injuries due to injuries suffered in the accident. Consequently, the claim for compensation has been rejected.

6. Feeling aggrieved by and dissatisfied with the award, appeal has been filed.

7. Record perused, counsel for the parties

heard. First question for determination is whether accident took place as alleged by the claimants, and if so, with the loading rickshaw driven rashly and negligently by its driver and as a result thereof the deceased died. Shri K.K. Nair, learned counsel for the Insurance Company contended that there is no evidence suggesting taking place of accident with the loading rickshaw, rather evidence suggests that deceased hit the electric pole, suffered injuries and died as a result thereof. Against this contention, Shri Ashutosh R. Bhatt, learned counsel for the appellants, submits that evidence read and understood carefully points out taking place of accident, Luna of deceased being hit by the loading rickshaw. Particular reference is made to the statements of the widow and brother of the deceased, fortified by written statement of appellant-1. As regards investigation by the police, it is submitted that it was incomplete, infirm, lopsided with an attempt to close the matter as against finding the truth, how the deceased died. With these rival submissions, let

evidence be seen, analysed and placed in proper perspective.

8. Undeniable is the fact of occurrence of accident, whether it has taken place as alleged by the claimant or as alleged by the Insurance Company. None from the Insurance Company substantiated the accident. The best person to speak about the accident could be the deceased or the residents of the area. Deceased fell unconscious and died. His widow was informed by the police about the accident. She states that accident took place with loading rickshaw which means, police must have told her this fact. Therefore, in absence of any statement to the contrary except stray version of a witness during cross-examination, it can be said that accident took place with the loading rickshaw. Similar is statement of Jagdishbhai Ambalal Jetalpuria (exh.46). Above all, opponent-1 has admitted taking place of accident in paragraph-3 of his written statement (exh.21) to the effect that there is no dispute in respect of statements made in paragraphs-1, 2, 3 and 4 of the petition.

Similar is his version about paragraphs-5, 6 and 7 of the petition. In paragraph-7 of the written statement, he states that deceased Vinodbhai Ambalal, after completion of night shift, was going home. During that period in area of Khokhra-Mehmedabad opposite Chirag Traders south side turn was taken near Kashi Vishwanath temple. Opponent-1 was coming with loading rickshaw and dashed with Luna, as a result of which the deceased hit the electric pole and received injuries on the head and other parts of the body. He also stated that when deceased was taking turn, the loading rickshaw hit the Luna, due to a big pit. As a result, deceased hit the electric pole and received injuries. Substance of statement by opponent-1 is admission of averments made in the claim petition, meaning thereby, taking place of accident, hitting of Luna by his loading rickshaw as a result of which Luna hit the electric pole resulting in injuries to head and other parts of the body, which in turn resulted in the death of the deceased. Under Order VIII, Rule 5 read with Order XV, Rule 1 and

2 of the Civil Procedure Code, award could be pronounced against the opponent-1, having admitted the averments in the claim. Even otherwise, after the issues were framed, during recording of evidence, opponent-1 nowhere denies the averments in the written statement. Looking to the fact that opponent-1 made three contradictory statements, first before the police, second in the written statement and the third in oral evidence, there is justification for accepting what is stated in the written statement and reject the other versions. The evidence clearly demonstrates that accident was caused by the loading rickshaw, as admitted in the written statement, resulting in injuries to head and other parts of the body of the deceased. Rash and negligent act on his part is writ large, therefore, the conclusion is that accident was caused by him. The loading rickshaw is covered by the insurance policy and no other submission to the contrary is raised. Consequently, the conclusions recorded by the Claims Tribunal are erroneous, therefore, set aside. It is held that

accident took place as alleged by the claimants.

9. Next question pertains to assessment of compensation. Shri Ashutosh R. Bhatt submits that deceased was 38 year old at the time of accident; he was working in a mill and Swaminarayan temple earning Rs.3,000/- per month. In support of the claim, pay slip from the mill and a certificate from Swaminarayan temple were produced. Shri K.K. Nair points out that the claimants have proved salary income from Nutan Mills to the extent of gross salary of Rs.1,735/- per month and net income of Rs.1,561/-, one third is required to be deducted towards personal expenses, there is no evidence as to age and even if it is taken to be 38 years, multiplier of 12 is applicable. Reference is made to decisions Asha and others Vs. United India Insurance Co. Ltd. (2004 ACJ 448), Tamil Nadu S.T. Corporation Ltd. Vs. Rajapriya and others (2005.4 Scale 336), The Managing Director, TNSCT Limited Vs. K.I. Bindu and others (2005(8) Scale 173) and General Manager, K.S.R.T. Corporation Vs. Susamma Thomas and others (1994 ACJ 1). **Shri Ashutosh Bhatt submits that deceased was 38 year old earing Rs.3,000/- per month. Bearing in mind the nature of evidence,**

desirable it would be to take the income of the deceased at Rs.1,500/- per month, age 38 years and making a deduction of one third towards personal expenses and applying multiplier 17, compensation can be worked out thus: Rs.1,500 - 1/3 = Rs.1,000 x 12 = Rs.12,000 x 17 = Rs.2,04,000/- + Rs.10,000 (loss of expectancy of life) + Rs.5,000 (consortium to life) + Rs.2,500 (loss to the estate) + Rs.3,000 (funeral expenses) totalling Rs.2,24,500/-.

Consequently, appeal is allowed, award passed by the Claims Tribunal is set aside. The claimants are held entitled to compensation of Rs.2,24,500/- with interest at the rate of 9 per cent from the date of application till payment, which be made within two months from the date of this judgment. The amount paid by way of interim compensation be deducted from the compensation, that may be worked out on the basis of this judgment.

Costs of this appeal shall be suffered by the parties.

(BHAWANI SINGH)
Chief Justice

(H.K. RATHOD)
Judge

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